IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 141 OF 2007

SHRI. MARIO FERNANDES ... Appellant
Versus
S T A T E THROUGH P. I. ATTACHED
TO MAINA CURTORIM POLICE STATION ... Respondent

Mr. R. Satardekar, Advocate holding for Mr. Menino Teles, Advocate for the Applicant.
Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 5th July, 2007

P.C.

Heard learned Counsel on behalf of the applicant and learned Public Prosecutor on behalf of the respondent.

The applicant herein is an accused against whom charge has been framed by the learned Additional Sessions Judge under sections 302, 394 of IPC.

The applicant was arrested on 9.12.2006 in connection with the murder of one Virginia Silveira who had left her house on 30.11.2006 and who had not returned. Her dead body with injuries on chest and abdomen was found on 1.12.2006 and on the same day a complaint was filed by her sister Smt. Thelma Dias.

The application for bail filed by the applicant has been rejected twice by learned Additional Sessions Judge, by orders dated 7.2.2007 and 1.4.2007 and as such the applicant has approached this Court, for bail.

The case against the applicant is based on circumstantial evidence and the circumstances on the basis of which charge has been framed and the bail application has been rejected, can be seen from para 7 of the order dated 1.4.2007 of the learned Additional Sessions Judge.

From the evidence collected, it can be seen that the deceased had withdrawn an amount of Rs.40,000/- on 29.11.2006 and soon thereafter on 2.12.2006 the accused purchased goods such as vacuum cleaner, washing machine, music system etc. from a dealer namely Pravin Naik at Panaji and it is stated on behalf of the respondent that the said goods came to be purchased by the applicant from the money found in the possession of the deceased. There is also other circumstantial evidence collected against the applicant namely the knife used in the commission of offence, the mobile phone of the deceased and the gold ornaments, including cash of Rs.5,000/-. The said gold ornaments have been identified by the relatives of the deceased, as belonging to the deceased.

The learned Counsel on behalf of the accused submits that the case of the respondent is entirely based on circumstantial evidence and if the said circumstances are to be believed, at the most they would show that either the applicant was a thief or was receiver of stolen property and therefore the applicant could not have been denied bail. In support of the said submission, learned Counsel has placed reliance on the case of Gangadhar F. Salunke v. State of Maharashtra (2005)3 B Cr C 17). The said case stood on its own facts and ultimately ends in the acquittal of the accused.

In the case of Prakash Parab v. State [2006(1) AIR Bom R 775], reliance was placed on the case of Wasim Khan v. State of Uttar Pradesh (AIR 1956 SC 400) wherein the Apex Court had held that in the absence of any explanation, the presumption arises that any one who took part in the robbery also took part in the murder and in cases which murder and robbery have been shown to form parts of one transaction, it has been held

that the recent and unexplained possession of the stolen property would be presumptive evidence to the charge of robbery as well as the charge of murder. The same view was followed by the Apex Court in the case of Ezhil and others v. State of Tamil Nadu (2002 AIR SCW 2060) stating that in the absence of reasonable and plausible explanation of the accused as to legitimate or origin of his possession of the articles of the deceased, presumption can be drawn not only of the fact that they were in possession of the stolen articles after committing robbery but also after committing murder of the deceased. An appeal filed in the case of Prakash Parab (supra) was eventually dismissed by the Apex Court.

The circumstantial evidence collected against the applicant shows that the applicant is involved in a serious crime like of murder and robbery. When the charge against the applicant is so serious, Court is bound to presume that no amount of bail will secure his attendance at the trial.

Considering the above, application for bail filed on behalf of accused is hereby dismissed.

N. A. BRITTO, J.

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